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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN ROLLAND
HERNANDEZ,

Defendant and Appellant.

2d Crim. No. B291254
(Super. Ct. No. CR37377)
(Ventura County)

After John Rolland Hernandez pled guilty to transporting methamphetamine (Health & Saf. Code, § 11379, subd. (a)), he moved to vacate his conviction pursuant to Penal Code¹ section 1473.7, subdivision (a)(1) on the ground that at the time of his plea, he mistakenly believed he was a citizen of the United States. The trial court denied the motion. We affirm.

¹ Further unspecified statutory references are to the Penal Code.

PROCEDURAL HISTORY

In 1995, Hernandez pled guilty to transporting methamphetamine. He initialed and signed a felony disposition statement, which included the following admonition: “If I am not a citizen, I could be deported, excluded from the United States or denied naturalization. (§ 1016.5).” It also stated: “I have read and understand this form. I have discussed with my attorney and understand the consequences of this plea and my constitutional rights.” Defense counsel also signed a statement acknowledging that he had explained the direct and indirect consequences of the plea and was satisfied that his client understood them.

At the plea hearing, Hernandez acknowledged initialing, reviewing, and understanding the provisions of the form relating to the consequences of his plea. The trial court accepted the guilty plea. It found that he understood the consequences of his plea and that he knowingly, intelligently, and understandingly waived his rights, and that his waivers and plea were free and voluntary. Based on the plea agreement, the court dismissed a second drug offense, suspended imposition of sentence, and ordered Hernandez to serve four years of probation with conditions, including 365 days in county jail.

In 1996, Hernandez violated probation and was ordered to serve 60 days in county jail. In 1997, a probation officer filed a declaration alleging that Hernandez violated probation based on the new arrest. The probation officer advised the court that Hernandez was placed on an immigration hold. Hernandez’s temporary resident status was revoked and removal

proceedings began.² In 1998, Hernandez admitted the probation violation. He was sentenced to two years in state prison.

In 2003, Hernandez filed a petition for a writ of *coram nobis*, seeking to vacate his conviction and guilty plea. The trial court granted the petition, finding that Hernandez had mistakenly believed he was a U.S. citizen at the time of his plea.

We reversed the order granting the writ petition. (*People v. Hernandez* (Dec. 29, 2003, B168274 [nonpub. opn.] (*Hernandez*)).) We concluded that (1) Hernandez did not show diligence in seeking relief because he did not seek *coram nobis* relief until five and a half years after his removal proceedings began, and (2) the evidence was insufficient to show a mistake of fact, i.e., that he thought he was a U.S. citizen. (*Id.* at pp. 7-9.) We noted that Hernandez’s petition only claimed he “was not properly admonished of the immigration consequences of his plea,” and it “did not claim that he mistakenly thought he was a citizen.” (*Id.* at p. 9.) Hernandez’s declaration also “did not say he believed he was a citizen,” but rather, after pleading guilty, “he found out ‘because I was born in Mexico and never became [a] United States citizen, I could be deported.’” (*Ibid.*) We concluded that his statement “does not suggest . . . that he mistakenly thought he was a citizen. . . . If he believed that temporary permanent resident status insulated him from the immigration consequences of his plea, that assumption would constitute a mistake of law.” (*Ibid.*) On remand, we directed the trial court to reinstate Hernandez’s conviction.

In 2018, Hernandez filed a motion to vacate his conviction pursuant to section 1473.7. Following a hearing, the trial court denied the motion. Based on the exhibits submitted

² Hernandez’s immigration proceedings are ongoing.

with the motion, the court’s own observations of Hernandez’s “demeanor and . . . his answers to the questions” at the hearing, and the record and procedural history of this case, the court found that his claim regarding his mistaken belief concerning his citizenship was not credible.

DISCUSSION

Section 1473.7, subdivision (a)(1) allows a person who is “no longer in criminal custody” to move to vacate a conviction if it “is legally invalid due to prejudicial error damaging the moving party’s ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences” of a guilty plea. The moving party must establish the prejudicial error by a “preponderance of evidence.” (§ 1473.7, subd. (e)(1).) Hernandez contends his mistaken belief that he was a U.S. citizen was “prejudicial error” that prevented him from meaningfully understanding the adverse immigration consequences of his plea. We disagree.

Hernandez asserts that the standard of review is abuse of discretion. (*People v. Superior Court (Zamudio)* (2000) 23 Cal.4th 183, 192.) We agree that abuse of discretion is the appropriate standard where, as here, the defendant is not claiming a violation of a constitutional right. (See *People v. Ogunmowo* (2018) 23 Cal.App.5th 67, 75-76 (*Ogunmowo*) [de novo standard applies where defendant claimed a “violation of a constitutional right (the right to effective assistance of counsel), [but] not a statutory violation”]; *People v. Perez* (2018) 19 Cal.App.5th 818, 828 [“court has discretion to grant or deny” the section 1473.7 motion where the defendant claimed he did not understand the immigration consequences of his plea]; see also *People v. Patterson* (2017) 2 Cal.5th 885, 894 [order on motion to

withdraw a plea under section 1018 on the grounds of mistake or ignorance is reviewed for abuse of discretion].) We will not reverse unless Hernandez demonstrates that the court acted in an arbitrary, capricious, and patently absurd manner. (*People v. Rodriguez* (1999) 20 Cal.4th 1, 9-10.)

Here, the trial court did not abuse its discretion when it determined that Hernandez did not demonstrate prejudicial error. The court found that Hernandez's claim that he did not know he was not a U.S. citizen was not credible. We do not assess credibility. That is a matter for the trial court, who has the "opportunity to observe [a witness's] demeanor and manner of testifying" and is in the best position to assess credibility. (*In re Cox* (2003) 30 Cal.4th 974, 998.)

The court's findings are supported by the record. Hernandez did not claim his mistaken belief that he was a U.S. citizen in his petition for a writ of *coram nobis* or in his accompanying declaration. (*Hernandez, supra*, B168274.) The record mentions that the probation report, which was prepared before his plea, states that he was born in Tijuana, Mexico. In the same report, it states that "U.S. Border Patrol has been notified of this conviction." Hernandez contends that the court ignored a conflicting statement in the probation report, which stated that he is a U.S. citizen. His trial counsel later clarified that Hernandez had "been in [the U.S.] his entire life." The probation report is not included in our record. Where there are conflicts in the evidence, we must construe the evidence in favor of the judgment. (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.)

Hernandez's primary evidence in support of the motion to vacate is his own declarations and his own testimony at the section 1473.7 hearing and at the *coram nobis* hearing.

However, it was within the trial court's discretion to reject Hernandez's self-serving declarations and testimony. (*People v. Dena* (1972) 25 Cal.App.3d 1001, 1011.) Hernandez does not demonstrate an abuse of discretion.³

DISPOSITION

The order is affirmed.

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TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

³ Because we conclude that substantial evidence supports the trial court's ruling, we need not decide the other arguments raised by the Attorney General.

Michele M. Castillo, Judge
Superior Court County of Ventura

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and Appellant.

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